

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HOUSE BILL 2081

AN ACT

AMENDING SECTIONS 20-1098, 20-1098.01, 20-1098.04 AND 20-1098.19, ARIZONA
REVISED STATUTES; RELATING TO CAPTIVE INSURERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 20-1098, Arizona Revised Statutes, is amended to
3 read:
4 20-1098. Definitions
5 In this article, unless the context otherwise requires:
6 1. "Affiliate" has the same meaning prescribed in section 20-481.
7 2. "Agency captive insurer" means a captive insurer that is owned by
8 one or more business entities that are licensed in any state as insurance
9 producers or managing general agents and that only insure risks on policies
10 placed through their owners.
11 3. "Alien captive insurer" means any insurer that is formed to write
12 insurance business for its affiliates and that is licensed pursuant to the
13 laws of an alien jurisdiction that imposes statutory or regulatory standards
14 that are acceptable to the director on companies transacting the business of
15 insurance in such a jurisdiction.
16 4. "Association" means any lawfully formed association of individuals
17 or business entities that has been in existence for at least one year and
18 that is organized for a primary purpose other than procuring or providing
19 insurance for its members.
20 5. "Association captive insurer" means a captive insurer that is
21 completely under the direct or indirect voting control of an association.
22 6. "Branch business" means any insurance business that is transacted
23 by a branch captive insurer in this state.
24 7. "Branch captive insurer" means an alien captive insurer that is
25 licensed pursuant to this chapter to transact the business of insurance
26 through a business unit with a principal place of business in this state.
27 8. "Branch operations" means any business operations of a branch
28 captive insurer in this state.
29 9. "Business entity" means any legal entity other than an individual
30 or sole proprietorship.
31 10. "Captive insurer" means any pure captive insurer, agency captive
32 insurer, group captive insurer or protected cell captive insurer that is
33 domiciled in this state and that is formed and licensed under this article.
34 11. "Controlled unaffiliated business" means an individual or business
35 entity that satisfies all of the following:
36 (a) Is not an affiliate of the captive insurer providing coverage or
37 reinsurance.
38 (b) Has a contractual relationship with an affiliate of the captive
39 insurer providing coverage or reinsurance.
40 (c) Whose risk management function that is related to the covered risk
41 of loss is controlled by an affiliate of the captive insurer providing
42 coverage or reinsurance.

1 12. "Deductible reimbursement" means insurance coverage that reimburses
2 the insured for the deductible it paid under a separate commercial insurance
3 policy issued to the same insured, without other conditions related to the
4 underlying loss.

5 13. "Direct or directly", when used in this article to describe the
6 transaction of insurance business by a captive insurer, means a transaction
7 in which the captive insurer issues an insurance policy that provides primary
8 coverage to the insured under the policy and that does not provide
9 reinsurance coverage to another insurer.

10 14. "Group captive insurer" means any of the following:

- 11 (a) A risk retention group.
- 12 (b) An industry group captive insurer.
- 13 (c) An association captive insurer.

14 15. "Industry group" means two or more business entities **OR PERSONS**
15 that are engaged in businesses or activities similar or related with respect
16 to the liability that they are exposed to by virtue of any related, similar
17 or common business, trade, product, services, premises or operations.

18 16. "Industry group captive insurer" means a captive insurer that is
19 completely under the direct or indirect voting control of an industry group.

20 17. "Manager" means a person who is experienced in the field of captive
21 insurance and who maintains all documents relating to a captive insurer's
22 operations, transactions and affairs in this state and assists the captive
23 insurer in its management and compliance with this article.

24 18. "Member" means any individual or business entity that belongs to a
25 group captive insurer.

26 19. "Participant" means an entity and any affiliates of the entity that
27 are insured by a protected cell captive insurer pursuant to a participant
28 contract.

29 20. "Participant contract" means a contract by which a protected cell
30 captive insurer insures risks of one or more participants and limits losses
31 under the contract to the assets of a protected cell.

32 21. "Protected cell" means a separate account that is established and
33 maintained by a protected cell captive insurer pursuant to a participant
34 contract.

35 22. "Protected cell captive insurer" means a captive insurer:

36 (a) In which the minimum capital and surplus required by applicable
37 law is provided by one or more sponsors.

38 (b) That is formed and licensed under this article.

39 (c) That insures the risks of participants through participant
40 contracts.

41 (d) That segregates liability under a participant contract through one
42 or more protected cells.

43 23. "Pure captive insurer" means a captive insurer that insures only
44 the risks of its affiliates and controlled unaffiliated business.

1 24. "Risk retention group" means a captive insurer that is organized
2 pursuant to the liability risk retention act of 1986 (15 United States Code
3 sections 3901 and 3902) and chapter 14 of this title.

4 25. "Sponsor" means an entity that meets the requirements of section
5 20-1098.06 and that the director has approved to provide all or part of the
6 capital and surplus required by applicable law to operate a protected cell
7 captive insurer.

8 Sec. 2. Section 20-1098.01, Arizona Revised Statutes, is amended to
9 read:

10 20-1098.01. Licensing; authority

11 A. If allowed by its articles of incorporation, bylaws or other
12 organizational document, an applicant may apply to the director for a license
13 to transact captive insurance, except that:

14 1. A pure captive insurer shall not insure risks other than the risks
15 of its affiliates and controlled unaffiliated business.

16 2. A group captive insurer, other than a risk retention group, shall
17 not insure risks other than the risks of its group members, its affiliates
18 and controlled unaffiliated business. A risk retention group shall insure
19 only the risks of its group members.

20 3. An agency captive insurer shall not:

21 (a) Insure any risks other than those placed by or through its owners.

22 (b) Directly insure life or disability insurance risks.

23 4. A protected cell captive insurer shall not insure any risks other
24 than those prescribed in its participant contracts.

25 B. The following apply to the transaction of insurance by a captive
26 insurer on a direct basis:

27 1. A captive insurer shall not directly insure any of the following
28 types of insurance business:

29 (a) Hospital service corporations, medical service corporations,
30 dental service corporations, optometric service corporations or hospital,
31 medical, dental and optometric service corporations as defined in section
32 20-822.

33 (b) Health care services organizations as defined in section 20-1051.

34 (c) Prepaid dental plan organizations as defined in section 20-1001.

35 (d) Prepaid legal insurance contracts as defined in section 20-1097.

36 (e) Business of title insurance as defined in section 20-1562.

37 (f) Personal motor vehicle or homeowner's insurance coverage or any
38 component of that insurance coverage.

39 (g) Mortgage guaranty insurance as defined in section 20-1541.

40 (h) Workers' compensation or employers' liability insurance policies
41 except in connection with a self-insurance program as prescribed in this
42 subsection.

43 2. A pure captive insurer shall not provide direct coverage of
44 workers' compensation or employers' liability in this state unless the
45 coverage is provided under a self-insurance program that is approved by the

1 industrial commission of Arizona pursuant to section 23-961. A captive
2 insurance program that is authorized by section 23-961 is subject to and
3 shall comply with all requirements of title 23, chapter 6 that are applicable
4 to self-insurance.

5 3. A pure captive insurer shall not provide direct coverage of
6 workers' compensation or employers' liability insurance in another state
7 unless the coverage is provided under a self-insurance program that is
8 qualified as a self-insurance program under the applicable state or federal
9 law, as determined by the agency or other entity that has jurisdiction over
10 the self-insurance program.

11 4. This subsection does not prohibit a captive insurer from directly
12 insuring deductible reimbursement risk.

13 5. THIS SUBSECTION DOES NOT PROHIBIT A CAPTIVE INSURER FROM DIRECTLY
14 INSURING EMPLOYMENT PRACTICES LIABILITY RISK.

15 C. A captive insurer shall not accept or cede reinsurance except as
16 provided in section 20-1098.11.

17 D. A captive insurer that writes life insurance or disability
18 insurance shall comply with all applicable state and federal laws.

19 E. A captive insurer shall:

20 1. Hold at least one meeting of its board of directors or, for
21 reciprocal insurers, its subscribers' advisory committee each year in this
22 state.

23 2. Maintain its principal place of business in this state.

24 3. Appoint a resident statutory agent to accept service of process
25 and to otherwise act on its behalf in this state and shall file the
26 appointment with the director. In the case of a captive insurer formed as a
27 corporation or reciprocal insurer, if the statutory agent cannot with
28 reasonable diligence be found at the registered office of the captive
29 insurer, the director is an agent of the captive insurer on whom any process,
30 notice or demand may be served.

31 F. Before receiving a license, an applicant for a captive insurer
32 license shall file with the director the following:

33 1. If formed as a corporation, a certified copy of its articles of
34 incorporation, articles of organization or other organizational document, a
35 copy of its duly adopted bylaws or other governance rules, a statement under
36 oath of its president and secretary showing its financial condition and any
37 other statement or document required by the director.

38 2. If formed as a reciprocal insurer, a copy of the power of attorney
39 of its attorney-in-fact, a copy of its subscribers' agreement, a copy of its
40 duly adopted bylaws or other governance rules, a statement under oath of its
41 attorney-in-fact showing its financial condition and any other statement or
42 document required by the director.

43 G. In addition to the information required by subsection F of this
44 section, each applicant for a captive insurer license shall file with the
45 director evidence of all of the following:

- 1 1. The amount and liquidity of its assets relative to the risks to be
2 assumed.
- 3 2. The adequacy of the expertise, experience and character of the
4 directors and officers of the captive insurer.
- 5 3. The overall soundness of its plan of operation.
- 6 4. The adequacy of the loss prevention programs of its insureds.
- 7 5. The engagement of a competent manager that does business at a
8 location in this state.
- 9 6. The establishment of business relationships with any accountants,
10 banks, attorneys and other professionals that are acceptable to the
11 department.
- 12 7. The ability of the captive insurer's owners or members to pay
13 claims to third parties if the captive insurer is unable to pay those claims.
- 14 8. Other factors deemed relevant by the director in ascertaining
15 whether the proposed captive insurer will be able to meet its policy
16 obligations.
- 17 H. In addition to the information required by subsections F and G of
18 this section, if the applicant is seeking authority as a protected cell
19 captive insurer, the applicant shall file:
 - 20 1. A business plan that demonstrates, in a manner acceptable to the
21 director, how the applicant will account for the loss and expense experience
22 of each protected cell and report that information to the director.
 - 23 2. A statement acknowledging that all financial records of the
24 protected cell captive insurer, including records pertaining to protected
25 cells, shall be available for inspection or examination by the director or
26 the director's designee.
 - 27 3. Its form for all participant contracts.
 - 28 4. Evidence that the protected cell captive insurer will allocate
29 expenses fairly and equitably to each protected cell.
- 30 I. Before the issuance of a license, an applicant shall promptly
31 notify the director of any material change in the information filed pursuant
32 to this section.
- 33 J. An applicant for a captive insurer license shall pay to the
34 director a nonrefundable fee for the issuance of a captive insurance license
35 pursuant to section 20-167. The captive insurer shall pay the license
36 renewal fee pursuant to section 20-167 when the captive insurer files the
37 annual report prescribed in section 20-1098.07.
- 38 K. If the director is satisfied that the documents and statements that
39 the applicant has filed comply with this article, the director may grant the
40 applicant a captive insurer license that authorizes the captive insurer to
41 transact captive insurance business in this state.
- 42 L. The director shall approve or deny an application for a license to
43 transact captive insurance business within thirty days after the director
44 deems the application complete.

1 Sec. 3. Section 20-1098.04, Arizona Revised Statutes, is amended to
2 read:

3 20-1098.04. Formation of captive insurers; redomestication

4 A. An agency captive insurer or protected cell captive insurer shall
5 be incorporated as a stock insurer with its capital divided into shares and
6 held by the stockholders. Each owner of an agency captive insurer shall be
7 licensed as an insurance producer or managing general agent.

8 B. A group captive insurer may be formed in any of the following ways:

9 1. Incorporated as a stock insurer with its capital divided into
10 shares and held by the stockholders.

11 2. Incorporated as a mutual insurer without capital stock, the
12 governing body of which is elected by the member organizations of its
13 association.

14 3. Organized as a reciprocal insurer pursuant to article 2 of this
15 chapter.

16 4. Incorporated as a nonprofit corporation pursuant to title 10,
17 chapter 25.

18 C. A pure captive insurer may be formed in any of the following ways:

19 1. Incorporated as a stock insurer with its capital divided into
20 shares and held by the stockholders.

21 2. Incorporated as a nonprofit corporation pursuant to title 10,
22 chapter 25.

23 3. Incorporated as a limited liability corporation pursuant to
24 title 29, chapter 4.

25 D. The capital stock of a captive insurer that is incorporated as a
26 stock insurer may be authorized with no par value.

27 E. A captive insurer that is formed as a corporation shall have at
28 least three incorporators, at least one of whom shall be a resident of this
29 state. **NOTWITHSTANDING SUBSECTION B, PARAGRAPH 3 OF THIS SECTION, a captive**
30 **insurer that is formed as a reciprocal insurer shall MAY be organized by**
31 **three or more subscribers, NONE OF WHOM SHALL BE REQUIRED TO BE A RESIDENT OF**
32 **THIS STATE , at least one of whom shall be a resident of this state.**

33 F. A pure captive insurer shall have at least one director. Any other
34 kind of corporate captive insurer shall have at least three directors. Any
35 group captive insurer formed as a reciprocal insurer shall have at least
36 three subscribers' advisory committee members. In addition to independent
37 directors, a group captive insurer may have as many directors as it has
38 members.

39 G. A captive insurer that is formed as a corporation shall have at
40 least one member of the board of directors who is a resident of this state.
41 A captive insurer that is formed as a reciprocal insurer shall have at least
42 one member of the subscribers' advisory committee who is a resident of this
43 state.

1 H. The articles of incorporation or bylaws of a captive insurer that
2 is formed as a corporation with more than one director may authorize a quorum
3 of a board of directors to consist of at least one-third of the fixed or
4 prescribed number of directors, but at least two directors. The subscribers'
5 agreement or other organizing document of a captive insurer formed as a
6 reciprocal insurer may authorize a quorum of a subscribers' advisory
7 committee to consist of at least one-third of the number of its members, but
8 at least two members.

9 I. Any foreign or alien insurer may become a domestic captive insurer
10 by complying with the requirements of this article relating to the licensing
11 of a domestic captive insurer and by complying with all applicable
12 requirements of the laws of this state relating to the domestication of a
13 corporation to this state. The effective date of a license that is issued to
14 a foreign or alien insurer domesticated to this state shall be the date of
15 filing its articles of domestication with the corporation commission.

16 Sec. 4. Section 20-1098.19, Arizona Revised Statutes, is amended to
17 read:

18 20-1098.19. Establishment of branch captive insurer

19 A. A branch captive insurer may be established in this state pursuant
20 to this chapter to write **INSURANCE OR REINSURANCE** in this state **EXCEPT AS**
21 **PROVIDED IN SECTION 20-1098.01, SUBSECTION B** ~~only insurance or reinsurance of~~
22 ~~the employee benefit business, other than workers' compensation or employers'~~
23 ~~liability insurance, of its parent and affiliated companies that are subject~~
24 ~~to the provisions of the employee retirement income security act of 1974 (29~~
25 ~~United States Code sections 1001 through 1461).~~

26 B. A branch captive insurer shall not conduct any insurance business
27 in this state unless it maintains the principal place of business for its
28 branch operations in this state.

29 C. A branch captive insurer shall be a pure captive insurer with
30 respect to operations and minimum capitalization in this state unless
31 otherwise permitted by the director.